

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 527 OF 2006

Jetu Jacques Taru Lalvani & Ors. ...Appellants

VS.

Deepak K. Marwadi @ Bumb and Ors. ..Respondent
no.1

N.K.Mudnany for the applicants.

Karande h/f. R.V. Govilkar for the respondents.

CORAM: S.B. DESHMUKH, J.
October 16, 2006.

P.C. :

1. Heard the learned counsel for the parties.

2. This appeal from order is filed by the original defendant nos.10 to 13, challenging the

judgment and order passed below Exhibit 139 in Special Civil Suit No. 684 of 1995, in this court. Parties hereinafter are referred to their status as plaintiffs and defendants in Special Civil Suit No. 684 of 1995.

3. Special Civil Suit No. 684 of 1995, filed by the original plaintiff, is for specific performance of contract, declaration and perpetual injunction. The defendant nos.10 to 13 have filed an application Exhibit 139 in the court of Learned Civil Judge, Senior Division, Pune. This application is filed on 17.1.2001. In this application the appointment of Receiver under Order 40 of the Code of Civil Procedure is requested by defendant nos.10 to 13. The Vth Additional Small Causes Judge and Senior Division, Pune after hearing the parties rejected the application Exhibit 139 by the order passed on April 3, 2006. It is this order which is challenged in this appeal from order as noted above.

4. The learned Trial Court rejected the application mainly on ground, that there are no averments in the application regarding illegal

quarrying by the original plaintiffs. The learned Trial court seems to have considered the documents at Exhibit 145 while deciding the application Exhibit 139. The trial Judge also observed that efficacious remedy is available to the defendant nos.10 to 13.

5. I have perused the application for appointment of Receiver filed by defendant nos.10 to 13. In paragraph 1 of the application, the defendant nos.10 to 13 have contended that they are bonafide purchasers for value without notice of the three-fourth undivided share of defendant nos.1,3 and 7 and members of their respective joint Hindu family in the suit property. According to the defendants their names also appeared in the revenue record. They have acquired the title to the property by registered sale deed. In paragraph 3 of the application it is alleged that defendant nos.10 to 13 have received symbolic possession of the said land purchased by them from defendant nos.1, 3 and 7 upon execution of the sale deed dated April 20, 1995. It is also alleged in paragraph 3 of the application that it is open for defendant nos.10 to 13, plaintiff and defendant nos.1,

2 and 7 as well as members of the joint family to cultivate part of the suit land. According to the defendants, no partition by metes and bounds took place between the members of the joint family. In paragraph 4 of the Civil Application, grievance is raised regarding cultivation of the suit property by defendant nos.10 to 13. In paragraph no.5 of the application it is alleged that the plaintiff and defendant nos.1 to 3 and 7 are recording names of unknown persons viz. Kakasubai Ramchandra Nahar who has no right, title and interest in the suit property. According to the defendant nos.10 to 13 in the facts and circumstances of the case, it has become just and necessary for appointment of the proper person as Receiver.

6. On careful consideration of the entire application, I do not find a whisper about illegal mining by the plaintiff and/or other defendants. The learned counsel for the applicant, has invited my attention to the order passed by the Additional Collector, Pune dated December 19, 2005. Copy of this order is also annexed with the appeal compilation. This order seems to have been passed in favour of on

Madan Kachardas Bumb. On my query the learned counsel of the applicant, admits that Madan Kachardas Bumb is not party to the Special Civil Suit No. 684 of 1995 pending in the trial court. Advocate for the applicant however submits that said Madan Kachardas Bumb is joined as a respondent in this appeal. Advocate for the applicant, also admits that the trial court while considering the application Exhibit 139 had no occasion to afford hearing to Madan Kachardas Bumb. The learned counsel for the applicant submits that appropriate proceedings challenging the order passed by the Additional Collector, Pune dated 19.12.2005 is filed by the present appellants and is pending before the appropriate authority. In these premise, the learned trial judge, in my view is justified in rejecting the application Exhibit 139 filed under Order 40 Rule 1 of CPC. The trial court justifiably came to the conclusion that no case for appointment of Receiver is established. In my view, the order passed by the trial court is justifiable in law and therefore the appeal needs to be dismissed.

7. Undisputedly suit is listed for final

hearing. Advocate for the respondent, submits that evidence of plaintiff is already recorded. The suit is adjourned to 6.11.2006. The learned counsel for the appellant, submits that appellants/defendant nos.10 to 13, would remain present before the trial court, on 20.11.2006 for adducing their evidence. The learned counsel for the respondent has pointed out that defendant no.10, never appeared before the trial court. Even this Appeal from Order is filed by the Power of Attorney holder on behalf of defendant no.10. In this view of the matter, I am permitting the defendant nos.10 to 13 to adduce evidence on 20.11.2006 and onwards as and when matter is adjourned by the trial court thereafter. Appeal from Order stands dismissed with no order as to costs.

8. All contentions are left open to be agitated and decided by the court concerned. The defendant nos.10 to 13 and plaintiff to appear before the trial court on 20.11.2006 for adducing evidence on behalf of defendant nos.10 to 13. The application filed by defendant nos.10 to 13 for adducing evidence is earlier rejected by the trial court. If such an

application is filed by defendant nos.10 to 13 on 20.11.2006, the learned counsel for the respondents submits that they would not object the same. The trial court by allowing the said application would afford opportunity to defendant nos.10 to 13 and decide the suit expeditiously and as far as possible i.e on/or before 31.1.2007. The learned counsel for the applicant and respondent on instructions from their clients make a statement that they would cooperate the hearing of the suit. Appeal is dismissed and disposed off in above terms. Interim /Ad-interim relief, order if any passed by this court earlier stands vacated.

sd/-

(JUDGE)